

# **CWIS STAKEHOLDERS MEETING**

**NOVEMBER 3, 2016**

## **PHASE II RULE**

**Note: The information below includes clarified TCEQ responses to questions and comments raised by attendees at the November 3, 2016 CWIS stakeholders meeting. These responses are subject to change.**

**TCEQ: Do stakeholders want the definition of “waters of the US” provided?**

**SH [Stakeholder]: Availability of guidance documents for completing the permit application?** The application (Worksheets 11.0-11.3) is currently being revised based on the rule guidelines. This should clarify what will be required with the permit application. Anticipate worksheets to be available for by the next SH meeting.

**SH: Will *de minimis* be considered Best Technology Available (BTA) for pump structures?** There is potential for indirect entrainment into a reservoir via the pump structure, but as pump structures do not typically feed the cooling portion of the cooling system (e.g. heat exchangers), there is little to no threat of mortality from entrainment at a pump structure. Additionally, pump structures do not typically have mesh screens and will not contribute to impingement of any life stage. Therefore, the TCEQ will consider *de minimis* to be BTA for I & E for pump structures. The facility may need to provide additional information about the CWIS that is feeding the cooling portion of the cooling system, if separate.

**SH: Will TPWD’s review of stocked and managed reservoirs trigger changes in renewal permit actions?** Upon review of the most current TPWD, or equivalent, report, the TCEQ may determine that additional information is needed to make a continuing BTA determination in a subsequent renewal action. Information including, but not limited to, changes in the health of the source water body or changes in the presence of federally listed endangered/threatened species or critical habitat may trigger request for additional information. Additionally, discontinuation of a stocked and management program will require submission of application materials during the subsequent permit action.

**SH: How do the three point of compliance (POC) scenarios displayed weigh into potential for adverse impacts on industrial cooling water reservoir or pump station?** Final determination of the POC(s) will depend on the argument made by the facility in their permit application.

**TCEQ: POC Scenario 1.** CWIS on Non-WOTUS reservoir with make-up on WOTUS: The Non-WOTUS intake is not a POC, but is subject to BPJ. The make-up will be considered a POC and may be required to complete all application materials. Minimum needed for Reservoir are § 125.98(f)(2), or “f-factors.”

**TCEQ: POC Scenario 2.** CWIS on WOTUS reservoir with make-up on WOTUS: Both MAY BE considered a POC. Even if only one is considered to be a POC, certain application materials are required for each intake.

**TCEQ: POC Scenario 3.** CWIS on WOTUS with no make-up: Clear, single POC. All materials required.

**SH: Is heat causing mortality?** Yes, generally. Entrainment Mortality (EM) is caused at the heat exchangers. Therefore, EM is generally not a concern at make-up structures. Where there is not heat added to an intake location (e.g. a make-up intake to a reservoir) 100% mortality to entrained organisms cannot be assumed.

**SH: CCRS, what certification/documentation is needed to show that an impoundment/reservoir is not a waters of US?** The TCEQ Water Quality Assessment Section has previously made a non-WOTUS determination for POC scenario #1, based on the narrative description and maps provided with the application. The section 404 certification from the US Corps is required for a non-WOTUS determination for POC scenario #2.

**SH: Must the section 404 certification be renewed 5 years?** The TCEQ is unaware of any renewal requirements for a section 404 certification from the US Corps.

**SH: Waste treatment system exception, are waste treatment systems exempt from waters of the US definition?** Yes, but may need a US Corps jurisdiction call.

**SH: Can you have only one cooling water intake structure?** No, there can be multiple CWIS utilized by a facility and there can be more than one POC.

**SH: Proof of BTA is separate from waiving application components?** Yes, application waivers will not exempt a facility from meeting BTA.

**SH: Fish and wildlife definition for contained and supportive species, what does TCEQ expect from industry for application purposes?** TCEQ is working to provide a definition for contained/supportive species.

**SH: Incorporation of an alternate submittal schedule for application requirements into permit, is this an amendment request or is it a minor modification?** A minor amendment is required to add the Alternate Schedule for Submittal of Application Requirements (ASSAR). A minor amendment does not trigger an EPA review. Want to confirm this is ok with EPS via letter. Must have amended permit issued before 7/14/2018.

**SH: Any permit issued after July 2018 must demonstrate compliance for both impingement and entrainment, but will a compliance schedule extend this deadline out?** A compliance schedule will not be offered for demonstrating compliance with the impingement mortality standard; however, see previous answer regarding ASSAR. The preamble indicates that the TCEQ may be able to give a compliance schedule for demonstrating compliance with the entrainment mortality standard, see page 48,327.

**SH: No national BTA standard on entrainment, so where/how will these determinations for point of compliance be made?** Not sure what technology facilities are choosing for entrainment compliance, nor the effectiveness of the technology, because we have not received any of the application materials from facilities. Once some of this information is obtained, the TCEQ will have a better idea what will be considered BTA for entrainment. Entrainment mortality is a concern at the cooling portion of the cooling system (e.g. condensers). Please see the POC handout or contact the TCEQ for additional clarification on POCs for entrainment.

**SH: Reservoirs managed by TPWD; how will they be reviewed?** If no Federally listed threatened or endangered species (T/E) or critical habitat present, the most current TPWD, or equivalent, report may be used to satisfy 40 CFR 122.21(r)(4) app requirements. If T/E species or critical habitat are present, the report may be used to supplement 40 CFR 122.21(r)(4) app requirements.

**SH: What is required to incorporate an ASSAR into a pending renewal or amendment (major or minor) application?** Pending renewal or amendment applications can submit a request to incorporate an ASSAR into the draft permit, as the requested addition would make the permit more stringent. The facility must submit information with their request demonstrating the facility could not develop the required information by the applicable date for submission, and propose and justify an alternate schedule of submission with interim milestones.

**SH: Walk us industry folks through how this application will be received and processed by TCEQ.** A permit application subject to the Final Rule will undergo the normal TCEQ permitting review process.

**SH: Cooling towers vs. alternate option where flow is reported daily vs. CCRS - Will TCEQ provide a worksheet that goes with DMR or will these records be kept in a log book on site or will TCEQ require an annual report to be submitted?** I don't believe a DMR will be an option. EPA is developing reporting software for specific use.

**SH: What is the coordination process with U.S. Fish and Wildlife review, since they have 60 days and then 45 days to review the permit application and draft permit?** 60 days prior to NAPD publication (2<sup>nd</sup> public notice) – USFWS will be notified via the SPIF, current TCEQ/USFWS coordination method. USFWS may request additional information as needed. Once the accepted draft permit is filed with CCO – If requested by USFWS, the TCEQ will send copies of the draft permit, Fact Sheet/Statement of Basis, and NAPD to USFWS. USFWS has 45 days to review.